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18 INDUSTRIES LIMITED PARTNERSHIP

19
20 IN THE UNITED STATES DISTRICT COURT
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA
22
23 WESTERN DIVISION

24 DESPATCH INDUSTRIES
25 LIMITED PARTNERSHIP, } Case No. 2:11-CV-2357 R (FMO)
26 Plaintiff, }
27 v. } **PROTECTIVE ORDER**
28 TP SOLAR, INC., } Hon. Manuel L. Real
Defendant. } Hon. Fernando M. Olguin

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STIPULATED PROTECTIVE ORDER

2 Plaintiff DESPATCH INDUSTRIES LIMITED PARTNERSHIP
3 (“Plaintiff”) and Defendant TP SOLAR, INC. (“Defendant”) agree that
4 disclosure and discovery activity in the above-captioned lawsuit are likely to
5 involve production of confidential, proprietary, and/or private information for
6 which special protection from public disclosure and from use for any purpose
7 other than prosecuting this litigation would be warranted. Such information
8 likely will include, among other things, sensitive product information, research
9 and testing information, product design and development materials, engineering
10 materials, supplier and vendor information, manufacturing and shipping
11 information, marketing and sales information, purchase orders, invoices, and
12 customer information relating to infrared furnaces and related equipment for
13 heat treatment of Silicon wafers (collectively, the “Sensitive Information”).

GOOD CAUSE STATEMENT

15 Plaintiff and Defendant (collectively, the “parties,” or singularly, a
16 “party”) respectfully believe that good cause exists to enter the instant
17 Protective Order in order to protect the Sensitive Information from public
18 disclosure. The Sensitive Information includes information and data that could
19 be used by actual or potential competitors, including the other party, to gain an
20 improper and unlawful competitive advantage in the marketplace. For example,
21 the Sensitive Information includes, among other things, confidential information
22 regarding the parties’ business strategy, operations and plans, financial and
23 ownership information, proprietary technical information, and employee and
24 customer information.

25 The parties are competitors in the design, manufacture, and sale of
26 continuous infrared furnaces for treating Silicon wafers converted into solar
27 cells for assembly into solar panels and other materials that can benefit from
28 controlled infrared radiation treatment. Due to the competitive relationship

1 between the parties, it is highly likely that disclosure of the Sensitive
2 Information of one party, especially that party's research, product design,
3 development, financial, sales, and customer information regarding infrared
4 furnaces and related equipment, will provide an improper or unlawful
5 competitive advantage to the other party. This Protective Order is necessary to
6 prevent such harm to each of the parties. The parties have attempted to draft
7 this Protective Order narrowly and in a manner no more restrictive than
8 necessary to protect the Sensitive Information from public disclosure.

9 IT IS HEREBY STIPULATED and agreed by and between counsel for
10 the parties that the terms and conditions of this Stipulated Protective Order shall
11 be entered as follows:

12 **DEFINITIONS AND RULES**

13 1. As used in this Protective Order, these terms have the following
14 meanings:

- 15 a. "Attorneys" means counsel of record;
- 16 b. "Confidential" documents are documents designated pursuant
17 to paragraph 2;
- 18 c. "Highly Confidential – Attorneys Eyes Only" documents are
19 the subset of Confidential documents designated pursuant to paragraph 5;
- 20 d. "Documents" are all materials within the scope of Fed. R. Civ.
21 P. 34; and
- 22 e. "Written Assurance" means an executed document in the form
23 attached as Exhibit A.

24 2. By identifying a document "Confidential," a party may designate
25 any document, including interrogatory responses, other discovery responses, or
26 transcripts, that it in good faith contends to constitute or contain trade secret
27 business and technical information, including but not limited to: business
28 strategy, operations and plans; financial and ownership information; sales,

1 profits, costs, shipping and customer information; vendor and supplier
2 information; intellectual property information; research and technical
3 information about products and processes including blueprints, CAD drawings,
4 schematics, lay outs, manufacturing and assembly plans, operations and
5 drawings; process operations; parts, equipment and services supplier and vendor
6 information; labor, employee and sales representative information, or other
7 confidential information entitled to protection under 26(c)(1)(G) of the Federal
8 Rules of Civil Procedure.

9 A party may not designate as “Confidential” any document or information
10 that:

11 a. at the time of the production or disclosure, is publicly
12 available as evidenced by: (1) a citation permitting unrestricted access,
13 (2) is in the public domain, as evidenced by a written document, drawing
14 or photograph not having a proprietary, confidential or restricted notice,
15 or (3) discloses a product, process, thing, device or part that is now or has
16 been in the past, commercially available;

17 b. through no wrongful act or fault of the receiving party, is or
18 has become part of the public domain; or

19 c. the receiving party can show it already lawfully possessed at
20 the time of the production or disclosure without being subjected to any
21 obligation to maintain the confidentiality of the information.

22 3. All Confidential documents, along with the information contained
23 in the documents, shall be used solely for the purpose of this action and no
24 person receiving such documents, or information contained in such documents
25 shall, directly or indirectly, transfer, disclose, or communicate in any way the
26 contents of the documents or information therein to any person other than those
27 specified in paragraph 4. Prohibited purposes include, but are not limited to, use
28 for competitive purposes, reverse engineering, or the obtaining, prosecution, or

1 enforcement of any intellectual property rights.

2 4. Access to any Confidential document shall be limited to:

3 a. the Court and its officers;

4 b. Attorneys and their office associates, legal assistants, and
5 stenographic and clerical employees;

6 c. persons shown on the face of the document to have authored
7 or received it;

8 d. court reporters retained to transcribe testimony;

9 e. officers, directors, principals, representatives and employees
10 of the parties, to the extent reasonably necessary to assist in the litigation;

11 f. outside independent persons (*i.e.*, persons not currently or
12 formerly employed by, consulting with, or otherwise associated with any
13 party) who are retained by a party or its attorneys to furnish technical or
14 expert services, or to provide assistance as mock jurors or focus group
15 members or the like, and/or to give testimony in this action.

16 The parties may agree in writing or on the record to permit access to
17 Confidential information to individuals not otherwise granted access by the
18 terms of this Protective Order. The writing or statement on the record must
19 identify the particular individual to whom the Confidential information will be
20 disclosed and specify, by Bates number if possible, the Protected Information to
21 be disclosed, and shall obtain a Written Assurance from each individual prior to
22 disclosing the Confidential Information.

23 5. A party shall have the right to further designate Confidential
24 documents or portions of documents as "Highly Confidential – Attorneys Eyes
25 Only" only if, in the reasonable and good faith belief of such party and its
26 counsel, (1) such document, including interrogatory responses, other discovery
27 responses, or transcripts, is properly entitled to protection under Rule
28 26(c)(1)(G) of the Federal Rules of Civil Procedure, and (2) the information

1 relates to certain financial, pricing, cost, licensing, supplier, representative,
2 distributor, vendor, marketing, business strategy or operations, sales, customer,
3 employment, research, engineering, development, manufacturing, shipping,
4 product, process and/or technical information that is particularly sensitive and/or
5 of immediate competitive significance. Disclosure of such information shall be
6 limited to the persons designated in paragraphs 4(a), (b), (c), (d), and (f), so long
7 as the persons of paragraphs 4(a), (b), (c), (d), and 4(f) do not communicate any
8 Highly Confidential information to persons of paragraph 4(e).

9 6. Third parties producing documents in the course of this action may
10 also designate documents as “Confidential” or “Highly Confidential – Attorneys
11 Eyes Only,” subject to the same protections and constraints as the parties to the
12 action. A copy of this Protective Order shall be served along with any subpoena
13 served in connection with this action. All documents produced by such third
14 parties shall be treated as “Highly Confidential – Attorneys Eyes Only” for a
15 period of fifteen (15) days from the date of their production, and during that
16 period any party may designate such documents as “Confidential” or “Highly
17 Confidential – Attorneys Eyes Only” pursuant to the terms of this Protective
18 Order.

19 7. Each person appropriately designated pursuant to paragraphs 4(e)
20 and 4(f) (herein “Such Person”), in advance, and as a condition of receiving any
21 Confidential information, shall execute a “Written Assurance” in the form
22 attached as Exhibit A. Opposing counsel shall be notified at least ten (10)
23 business days prior to disclosure to any Such Person and identify as to each the
24 designated documents by Bates number that are sought to be disclosed to each
25 Such Person. Such notice shall provide a reasonable description of Such Person
26 to whom disclosure is sought sufficient to permit objection to be made. If a
27 party objects in writing to such disclosure within ten (10) business days after
28 receipt of notice, no disclosure shall be made until the party seeking disclosure

1 obtains the prior approval of the Court or the objecting party. Notices and
2 objections made pursuant to this paragraph 7 may be made electronically in
3 writing by e-mail or fax, followed by a confirmation copy by U.S. Mail.

4 8. All depositions or portions of depositions taken in this action that
5 contain trade secret, Sensitive Information, or other confidential information
6 may be designated “Confidential” or “Highly Confidential – Attorneys Eyes
7 Only” and thereby obtain the protections accorded other “Confidential” or
8 “Highly Confidential – Attorneys Eyes Only” documents. Confidentiality
9 designations for depositions shall be made either on the record or by written
10 notice to the other party within ten (10) business days after receipt of the
11 transcript. Unless otherwise agreed, the entire transcript of depositions shall be
12 treated as “Highly Confidential – Attorneys Eyes Only” during the 10-day
13 period following receipt of the transcript. The deposition of any witness (or any
14 portion of such deposition) that encompasses confidential information shall be
15 taken only in the presence of persons who are qualified to have access to such
16 information and permitted to attend such depositions. A party may request that
17 anyone not authorized to receive “Confidential” or “Highly Confidential –
18 Attorneys Eyes Only” information, or not permitted to attend depositions or
19 court sessions pursuant to the Federal Rules of Evidence, exit the deposition
20 during the discussions of any such information, but the failure of any party to
21 request the removal of anyone not authorized to receive such information or
22 attend shall not constitute a waiver of the right to subsequently designate any or
23 all portions of the deposition as “Confidential” or “Highly Confidential –
24 Attorneys Eyes Only” in accordance with this paragraph. The term “deposition”
25 as used herein also applies to any notes, extracts, data or information from each
26 deposition made or communicated by attorneys for the parties relating to the
27 deposition.

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1 9. Any party who inadvertently fails to identify documents as
2 “Confidential” or “Highly Confidential – Attorneys Eyes Only” shall have ten
3 (10) business days from the discovery of its oversight to correct its failure.
4 Such failure shall be corrected by providing written notice of the error and
5 substituted copies of the inadvertently produced documents. Any party receiving
6 such inadvertently unmarked documents shall use its best efforts to retrieve
7 documents distributed to persons not entitled to receive documents with the
8 corrected designation, and to advise the other party of the recipients of the
9 documents prior to retrieval.

10 10. Any party who inadvertently discloses documents that are
11 privileged or otherwise immune from discovery shall, promptly upon discovery
12 of such inadvertent disclosure, so advise the receiving party and request that the
13 documents be returned. The receiving party shall return such inadvertently
14 produced documents, including all copies, within ten (10) business days of
15 receiving such a written request. The party returning such inadvertently
16 produced documents may thereafter seek appropriate production of any such
17 documents pursuant to applicable law.

18 11. With respect to Court filing or use at trial or on appeal of
19 Confidential information produced hereunder:

20 a. If a party files a document containing Confidential
21 information with the Court, it shall do so in compliance with the
22 Electronic Case Filing Procedures for the Central District of California.

23 b. Before any materials produced in discovery, Answers to
24 Interrogatories, Responses to Requests for Admission, deposition
25 transcripts or other documents which are designated as “Confidential” or
26 “Highly Confidential – Attorneys Eyes Only,” are filed with the Court for
27 any purpose, the party seeking to file the material so designated shall seek
28 permission of the Court by appropriate Motion to file the material under

1 seal, providing notice to any third party whose designation of produced
2 documents as “Confidential” and/or “Highly Confidential – Attorneys
3 Eyes Only” in the action may be affected. The Court permitting, until
4 permission is granted, the party seeking permission shall file the material
5 provisionally under seal, so marked, unless the producing party agrees
6 otherwise. The parties agree to and will follow and abide by applicable
7 law, including Local Civil Rule 79-5, with respect to filing documents
8 under seal in this Court.

9 c. Any documents approved by the Court for filing under seal
10 shall be so designated in a cover sheet, captioned “Filed” or
11 “Provisionally Filed” as the case may be followed by “Under Seal
12 Pursuant to Protective Order by Order of Court,” and each page shall
13 carry a stamp with the same designation. The Order of Permission to File
14 Under Seal may request or direct the Clerk of Court to maintain such
15 documents under seal, unavailable to anyone but Outside Counsel of
16 record for the parties. Prior to disclosure at trial or a hearing of materials
17 or information designated “Confidential” or “Highly Confidential –
18 Attorneys Eyes Only,” the parties may seek from the Court further
19 protections against public disclosure as the parties may deem necessary.

20 12. Any party may request a change in the designation of any
21 information designated “Confidential” and/or “Highly Confidential – Attorneys
22 Eyes Only.” Any such document shall be treated as originally designated until
23 the change is completed. If the requested change in designation is not agreed to,
24 the party seeking the change may move the Court for appropriate relief,
25 providing notice to any third party whose designation of produced documents as
26 “Confidential” and/or “Highly Confidential – Attorneys Eyes Only” in the
27 action may be affected. The party asserting that the material is Confidential
28 ///

1 shall have the burden of proving that the information in question is within the
2 scope of protection afforded by Fed. R. Civ. P. 26(c).

3 13. Within sixty (60) days of the termination of this action, including
4 any appeals, each party shall, at the election of the producing party, either
5 destroy or return to the producing party all documents designated by the
6 producing party as “Confidential” and/or “Highly Confidential – Attorneys Eyes
7 Only,” and all copies of such documents, and shall destroy all extracts and/or
8 data taken from such documents. Each party shall provide a certification as to
9 such return or destruction as having been completed within the 60-day period.
10 Attorneys shall be entitled to retain under seal appropriately designated in the
11 caption as “Retained Under Seal Pursuant to Protective Order” a set of all
12 Confidential documents filed with the Court and all notes, communication and
13 correspondence related thereto that were generated by them in connection with
14 the action. Such retained documents may be unsealed only by appropriate order
15 of Court, or by permission in writing of the producing party.

16 14. Any party may apply to the Court for a modification of this
17 Protective Order, and nothing in this Protective Order shall be construed to
18 prevent a party from seeking such further provisions enhancing or limiting
19 confidentiality as may be appropriate.

20 15. No action taken in accordance with this Protective Order shall be
21 construed as a waiver of any claim or defense in the action or of any position as
22 to discoverability or admissibility of evidence.

23 16. The obligations imposed by this Protective Order shall survive the
24 termination of this action. Within sixty (60) days following the expiration of the
25 last period for appeal from any order issued in connection with this action, the
26 parties may remove any materials designated “Confidential” and/or “Highly
27 Confidential – Attorneys Eyes Only” from the office of the Clerk of Court.

28 ///

1 Following that 60-day period, the Clerk of Court shall destroy all “Confidential”
2 and/or “Highly Confidential – Attorneys Eyes Only” materials.

3 17. This Order may be modified by agreement of the parties, subject to
4 approval by the Court.

5 IT IS SO ORDERED.

7 || Dated: May 27, 2011

Read

**UNITED STATES DISTRICT JUDGE/
UNITED STATES MAGISTRATE JUDGE**

11153452_1

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DESPATCH INDUSTRIES
LIMITED PARTNERSHIP,
Plaintiff,
v.
TP SOLAR, INC.,
Defendant.

) Case No. 2:11-CV-2357 R (FMO)
}
}
**WRITTEN ASSURANCE
REGARDING PROTECTIVE
ORDER**
}
}
Hon. Manuel L. Real
Hon. Fernando M. Olguin

12 || declares that:

13 1. I reside at _____ in the
14 city of _____, county _____,
15 state of _____.

16 2. I am currently employed by _____
17 located at _____ and my current job title
18 is _____.

19 3. I have read and believe I understand the terms of the Protective
20 Order dated _____, filed in Civil Action No. 2:11-CV-2357 R (FMO),
21 pending in the United States District Court for the Central District of California.
22 I agree to comply with and be bound by the provisions of the Protective Order.
23 I understand that any violation of the Protective Order may subject me to
24 sanctions by the Court.

25 4. I shall not divulge any documents, or copies of documents,
26 designated “Confidential” or “Highly Confidential – Attorneys Eyes Only”
27 obtained pursuant to such Protective Order, or the contents of such documents,
28 to any person other than those specifically authorized by the Protective Order. I

1 shall not copy or use such documents except for the purposes of this action and
2 pursuant to the terms of the Protective Order.

3 5. As soon as practical, but no later than thirty (30) days after final
4 termination of this action, I shall return to the attorney from whom I have
5 received them any documents in my possession designated "Confidential" or
6 "Highly Confidential - Attorneys Eyes Only," and all copies, excerpts,
7 summaries, notes, digests, abstracts, and indices relating to such documents.

8 6. I submit myself to the jurisdiction of the United States District
9 Court for the Central District of California for the purpose of enforcing or
10 otherwise providing relief relating to the Protective Order, but not for the
11 purpose of conferring jurisdiction over the party engaging me, or for whom I am
12 employed, in any jurisdiction other than the Central District of California.

13 I declare under penalty of perjury that the foregoing is true and correct.

15 Executed on _____
16 (Date)

(Signature)

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